

Regular Session, 2008

HOUSE BILL NO. 837

BY REPRESENTATIVE MARCHAND

LEASES: Provides for certain rights and obligations of lessors and lessees relative to residential leases

1 AN ACT

2 To amend and reenact Civil Code Article 2728, Code of Civil Procedure Article 4703, and
3 R.S. 9:3251(A), 3252(A), 3253, and 3260 and the heading of Part V of Code Title
4 IX of Title 9 of the Louisiana Revised Statutes of 1950, and to enact R.S. 9:3258.1
5 and 3262, relative to residential leases; to provide for certain rights and obligations
6 of lessors and lessees; to provide relative to deposits; to provide for certain required
7 contents of residential leases; to provide for notices to lessees; to require recordation;
8 to prohibit certain actions of a lessor; to provide for notice of termination of
9 residential leases; to provide for mailing of notice, process, pleading, or order; to
10 provide for penalties; to provide for termination of lease obligations in domestic
11 abuse cases; and to provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. Civil Code Article 2728 is hereby amended and reenacted to read as
14 follows:

15 Art. 2728. Notice of termination; timing

16 The notice of termination required by the preceding Article shall be given at
17 or before the time specified below:

18 (1) In a lease whose term is measured by a period longer than a month, thirty
19 calendar days before the end of that period;

20 (2) In a month-to-month lease, other than a residential lease, ten calendar
21 days before the end of that month;

1 (3) In a month-to-month residential lease, thirty calendar days before
2 termination of the residential lease;

3 ~~(3)~~ (4) In a lease whose term is measured by a period equal to or longer than
4 a week but shorter than a month, five calendar days before the end of that period; and

5 ~~(4)~~ (5) In a lease whose term is measured by a period shorter than a week,
6 at any time prior to the expiration of that period.

7 A notice given according to the preceding Paragraph terminates the lease at
8 the end of the period specified in the notice, and, if none is specified, at the end of
9 the first period for which the notice is timely.

10 Section 2. Code of Civil Procedure Article 4703 is hereby amended and reenacted
11 to read as follows:

12 Art. 4703. Delivery or service when premises abandoned or closed, or whereabouts
13 of tenant or occupant unknown

14 If the premises are abandoned or closed, or if the whereabouts of the lessee
15 or occupant is unknown, all notices, process, pleadings, and orders required to be
16 delivered or served on the lessee or occupant under this Title may be attached to a
17 door of the premises not less than five days after mailing of the notice, process,
18 pleading, or order to the last known address of the lessee or occupant, and this shall
19 have the same effect as delivery to, or personal service on, the lessee or occupant.

20 Section 3. R.S. 9:3251(A), 3252(A), 3253, and 3260 and the heading of Part V of
21 Code Title IX of Title 9 of the Louisiana Revised Statutes of 1950 are hereby amended and
22 reenacted and R.S. 9:3258.1 and 3262 are hereby enacted to read as follows:

23 §3251. Lessee's deposit to secure lease; retention by lessor; conveyance of leased
24 premises; itemized statement by lessor

25 A. Any advance or deposit of money furnished by a tenant or lessee to a
26 landlord or lessor to secure the performance of any part of a written or oral lease or
27 rental agreement shall be returned to the tenant or lessee of residential or dwelling
28 premises within ~~one month~~ ten days after the lease shall terminate, except that the
29 landlord or lessor may retain all or any portion of the advance or deposit which is

1 reasonably necessary to remedy a default of the tenant or to remedy unreasonable
2 wear to the premises. If any portion of an advance or deposit is retained by a
3 landlord or lessor, he shall forward to the tenant or lessee, within ~~one month~~ ten days
4 after the date the tenancy terminates, an itemized statement accounting for the
5 proceeds which are retained and giving the reasons therefor. The tenant shall furnish
6 the lessor a forwarding address at the termination of the lease, to which such
7 statements may be sent.

8 * * *

9 §3252. Damages; venue

10 A. The willful failure to comply with R.S. 9:3251 shall give the tenant or
11 lessee the right to recover actual damages or ~~two~~ five hundred dollars, whichever is
12 greater, from the landlord or lessor, or from the lessor's successor in interest. Failure
13 to remit within ~~thirty~~ ten days after written demand for a refund shall constitute
14 willful failure.

15 * * *

16 §3253. Costs and ~~attorney's~~ attorney fees

17 A. In an action brought under R.S. 9:3252, the court may in its discretion
18 award costs and ~~attorney's~~ attorney fees to the prevailing party.

19 B. In an action on a residential lease brought under R.S. 9:3252, the court
20 shall award costs and fees to the prevailing party.

21 * * *

22 PART V. ~~LESSORS' RIGHTS~~ OBLIGATIONS AND RIGHTS OF THE LESSOR

23 * * *

24 §3258.1. Residential lease contracts; required contents; recordation; prohibition of
25 constructive eviction; penalties

26 A. A copy of a residential lease contract, and any attachment or addendum,
27 executed for the lease of immovable property in this state shall be provided to the
28 lessee within seven days of signing of the lease.

1 B. Each residential lease shall contain or have attached to the lease all of the
2 following:

3 (1) The name and physical address of the lessor for purposes of service of
4 process. Notice of any change of this information shall be provided in writing to the
5 lessee within seven days of the change of information.

6 (2) A summary, signed and dated by the lessee, of the lessee's rights and
7 obligations under the lease, including but not limited to all of the following:

8 (a) The lessee's and lessor's right to cancel the lease as well as the number
9 of days notice of cancellation is required to be delivered prior to cancellation.

10 (b) The lessee's rights if the lessor sells the leased property.

11 (c) A summary of the procedures for eviction, including the right to evict if
12 a lease payment is late, and the effect of the landlord's acceptance of a late lease
13 payment once eviction proceedings have commenced.

14 (d) The lessee's rights and the procedures for requesting repair of the leased
15 property and when the lessee may make the repairs and deduct the expenses of repair
16 from the lease payments.

17 (e) The lessee's and lessor's rights to terminate the lease or abandon the
18 leased property should the property become uninhabitable.

19 (f) The lessor's obligation to return the security deposit or to account for the
20 use of the security deposit, and the right of the lessee to collect statutory damages if
21 the lessor fails to return or account for the deposit within the required number of
22 days after written demand from the lessee.

23 C. A copy of every residential lease contract executed for the lease of
24 immovable property in this state, or a notice of such lease complying with R.S.
25 44:104, shall be recorded by the lessor with the recorder of mortgages or register of
26 conveyances for the parish in which the property subject to the lease is located.

27 D. Prior to obtaining a court order or judgment of eviction, a lessor shall not
28 take any action to constructively evict the lessee, such as disconnecting the lessee's

1 utilities, locking the lessee out of the leased premises, or removing the lessee's
2 property.

3 E The willful failure to comply with the provisions of this Section shall give
4 the lessee the right to recover actual damages or five hundred dollars, whichever is
5 greater, from the lessor, or from the lessor's successor in interest.

6 * * *

7 PART VI. OBLIGATIONS AND RIGHTS OF THE LESSEE

8 §3260. Premises rendered uninhabitable; mitigation of damages

9 A. When a lessee or tenant of commercial, residential, or dwelling premises
10 has been constructively evicted from the premises, and when the premises are
11 rendered uninhabitable through no fault of the lessee or tenant, the landlord or lessor
12 shall be required to mitigate his damages.

13 B. If a lessee of a residential lease has been constructively evicted from the
14 premises pursuant to the provisions of this Section, and if the lessor fails to remedy
15 the cause rendering the premises uninhabitable within fourteen days of receipt of
16 written notice of the conditions causing the constructive eviction, the lessee may, at
17 his option, withhold payment of the rent until the premises is repaired or cancel the
18 lease.

19 * * *

20 §3262. Right to terminate lease in domestic abuse cases

21 If, after a contradictory hearing, a protective order or an injunction has been
22 issued in accordance with law, against a co-lessee or spouse, the lessee or spouse
23 obtaining the protective order or injunction shall be entitled to be immediately
24 removed from any further obligations under a residential lease agreement upon
25 presentation of a copy of the protective order or injunction to the lessor.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Marchand

HB No. 837

Abstract: Provides for certain rights and obligations of lessors and lessees relative to residential leases, including: the timing of providing notice of termination and return of deposits; the award of penalties; the required contents of leases; the mandatory recordation of leases; and certain causes for termination.

Present law (C.C. Art. 2728) provides, in part, that notice of termination of a month-to-month lease shall be given at least 10 calendar days before the end of that month.

Proposed law retains present law but provides that in a residential lease, notice of termination of a month-to-month lease, shall be given at least 30 calendar days before termination of the residential lease.

Present law (C.C.P. Art. 4703) provides that if the premises are abandoned or closed, or if the whereabouts of the lessee or occupant is unknown, all notices, processes, pleadings, or orders required to be delivered or served on the lessee or occupant may be attached to a door of the premises and shall have the same effect as delivery to, or personal service on, the lessee or occupant.

Proposed law retains present law but requires mailing of the notice, process, pleading, or order at least five days prior to attaching the notice, process, pleading, or order to the door of the premises.

Present law provides for the return of any deposit, or if any portion of the deposit is retained, an itemized statement accounting for the use of the funds, within one month of termination of the lease.

Proposed law shortens the period to return the deposit or deliver the accounting from one month to 10 days.

Present law provides that the willful failure to return the deposit or deliver the accounting shall give the tenant or lessee the right to recover actual damages or \$200, whichever is greater, from the landlord or lessor, or from the lessor's successor in interest, and that failure to remit within 30 days after written demand for a refund shall constitute willful failure.

Proposed law retains present law but increases the amount recoverable to actual damages or \$500, whichever is greater, and provides that failure to remit within 10 days after written demand for a refund shall constitute willful failure.

Present law provides that in an action brought under present law, the court may in its discretion award costs and attorney fees to the prevailing party.

Proposed law retains present law, but requires the court to award costs and attorney fees to the prevailing party in an action brought under a residential lease.

Proposed law requires that a copy of a residential lease contract, and any attachment or addendum, executed for the lease of immovable property in this state shall be provided to the lessee within seven days of signing of the lease. Proposed law (R.S. 9:3258.1(B)) requires that each residential lease shall contain or shall have attached to the lease certain information.

Proposed law requires that a copy of every residential lease contract, or a notice of such lease, shall be recorded by the lessor with the recorder of mortgages or register of conveyances for the parish in which the property subject to the lease is located.

Proposed law prohibits a lessor from taking any action to constructively evict the lessee, such as disconnecting the lessee's utilities, locking the lessee out of the leased premises, or removing the lessee's property prior to obtaining a court order or judgment of eviction.

Proposed law provides that the willful failure to comply with the provisions of proposed law shall give the lessee the right to recover actual damages or \$500, whichever is greater, from the lessor, or from the lessor's successor in interest.

Present law provides that when a lessee or tenant of commercial, residential, or dwelling premises has been constructively evicted from the premises, and when the premises are rendered uninhabitable through no fault of the lessee or tenant, the landlord or lessor shall be required to mitigate his damages.

Proposed law provides that if a lessee of a residential lease has been constructively evicted from the premises, and if the lessor fails to remedy the cause rendering the premises uninhabitable within 14 days of receipt of written notice of the conditions causing the constructive eviction, the lessee may, at his option, withhold payment of the rent until the premises are repaired or cancel the lease.

Proposed law provides that a lessee or spouse obtaining a protective order or injunction shall be entitled to be immediately removed from any further obligations under a residential lease agreement upon presentation of a copy of the protective order or injunction to the lessor.

(Amends C.C. Art. 2728, C.C.P. Art. 4703, and R.S. 9:3251(A), 3252(A), 3253, and 3260;
Adds R.S. 9:3258.1 and 3262)